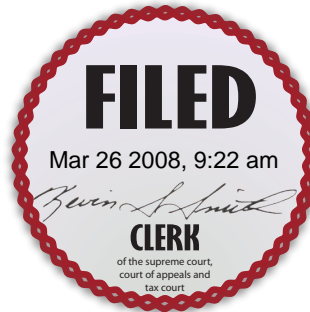


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEYS FOR APPELLANT:

J. J. PAUL, III
JOHN D. FIEREK
Voyles Zahn Paul Hogan & Merriman
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JOHN DAVID HADDIX,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 15A01-0606-CR-249
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE DEARBORN CIRCUIT COURT
The Honorable James D. Humphrey, Judge
Cause No. 15C01-0602-FA-1

March 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

John David Haddix appeals the trial court's order denying his Motion to Release Bond. Haddix raises three issues for our review, but we address only the following dispositive issue: whether Haddix has standing to maintain this action against the State.

We affirm.

FACTS AND PROCEDURAL HISTORY

On January 31, 2006, the State arrested Haddix. The next day, the State charged him as follows: Dealing in a Schedule II Controlled Substance within 1000 Feet of a Public Park, as a Class A felony; Possession of a Controlled Substance with Intent to Deliver, as a Class B felony; Possession of a Schedule IV Controlled Substance within 1000 Feet of a Public Park, as a Class C felony; and Maintaining a Common Nuisance, as a Class D felony. The trial court held an initial hearing on February 2, at which the court set Haddix's bond at \$500,000 surety and \$5,000 cash.

The next day, the State filed a motion to increase Haddix's bond ("Motion to Increase Bond"), specifying "additional information to warrant the increase of the bond." Appellant's App. at 167. The court scheduled a hearing on the State's Motion to Increase Bond for February 7. However, also on February 3, after the State had filed its motion, three members of Haddix's family contacted Gary Good, a local bond agent, for purposes of posting the initial bond. Good informed Haddix's family that he would post the \$500,000 bond for a nonrefundable ten percent, or \$50,000, premium. Good also informed them that the State had filed a Motion to Increase Bond, and "that if they posted the current bond . . . it could be modified." Appellant's Supp. App. at 12. Haddix's

family chose to proceed with paying the initial bond premium, presenting Good with a \$50,000 check and signing a “Promissory Note, Revolving Credit and Indemnity Agreement” (“Bond Contract”) with Good. Appellant’s App. at 255-62. Haddix’s family then paid the \$5,000 cash bond at the jail, and Haddix was released from custody.

On February 7, the court held a hearing on the State’s Motion to Increase Bond. The court heard evidence presented by both the State and Haddix, after which the court ordered Haddix’s cash bond amount increased by an additional \$2,000,000. Specifically, the court found “clear and convincing” “additional evidence” that Haddix was “a significant danger to the community.” Id. The court also found that the new evidence “indicated instability” on Haddix’s part “and a likelihood of nonappearance for future hearings.” Id. Haddix was taken back into custody.

On February 24, Haddix filed a motion to correct error, alleging that the court abused its discretion in increasing his bond to \$2,000,000. Haddix also alleged that the increased bond amount denied him his rights under the Indiana Constitution. The court denied Haddix’s motion on April 20. Haddix then filed his first notice of appeal on May 16, 2006. While his first appeal was pending, he entered into a plea agreement with the State on the criminal charges and the court sentenced him accordingly.

In his first appellant’s brief (“First Brief”), Haddix reiterated his position that the trial court had abused its discretion in increasing his bond amount and that the new bond sum denied him his rights under the Indiana Constitution. Haddix also argued, for the first time, that “the trial court should order the return of the Fifty Thousand Dollars paid

to the bondsman for bond” based on statutory and equitable grounds.¹ First Brief at 12. In December of 2006, Haddix and the State filed a joint motion to dismiss Haddix’s appeal of “the issue regarding the increase in the cash-bond”² and to remand the “surety premium issue” to the trial court. Haddix v. State, No. 15A01-0606-CR-249 (Ind. Ct. App. January 19, 2007) (order granting joint status report requests).

On May 30, 2007, the trial court held its hearing on remand. Haddix, Good, and the State were each present with counsel. However, the State did not participate in the hearing. Rather, only Haddix and Good presented evidence and argument to the court regarding the return of the surety-bond premium, although Good was not a party of record and Good’s counsel had not filed an appearance with the trial court. On July 9, the court denied Haddix’s request to have Good return the surety premium. Specifically, the court determined that Haddix had “attempted to mislead the Court” and had not “come before the Court with ‘clean hands.’” Appellant’s Supp. App. at 13. The court then concluded that “the circumstances [did not] present an impossibility of performance issue,” and that Indiana Code Section 27-10-2-5, which describes situations in which a defendant may forfeit the return of a bond premium, did not apply here because Haddix

¹ In his First Brief, Haddix asserted that he raised this issue to the trial court at the February 7 hearing. However, our review of the record reveals that Haddix asserted only that the State did not present any new evidence to justify increasing his bond amount. And in making that argument, Haddix’s counsel, in passing, noted as follows: “If the Court were to grant [the State’s Motion to Increase Bond], that is \$50,000.00 non-refundable for four days [out of jail]. That is unjust.” Appellant’s App. at 231.

² Once Haddix pleaded guilty and was sentenced, whether the trial court abused its discretion in increasing his bond and whether that increased bond was unconstitutional became moot issues. See Holguin v. State, 256 Ind. 371, 269 N.E.2d 159, 160-61 (1971); Minniefield v. State, 569 N.E.2d 734, 735 (Ind. Ct. App. 1991).

“was forewarned [of the Motion to Increase Bond and that the premium was not refundable] and received what he bargained for.” Id.

On August 3, Haddix filed his second notice of appeal. Haddix served his second notice of appeal on only the Dearborn County Prosecuting Attorney and the Attorney General. On October 12, this court, on Haddix’s motion, reinstated his first appeal, and Haddix served a new appellant’s brief (“Second Brief”) on the State. The State then filed a motion to withdraw its appearance (“Motion to Withdraw Appearance”), asserting that it is not a real party in interest to Haddix’s appeal. We held the State’s Motion to Withdraw Appearance in abeyance. The State then filed a notice of its intention to not file an appellee’s brief, which we accepted.

DISCUSSION AND DECISION

In this appeal, Haddix raises three issues for our review. Specifically, Haddix asks this court to address the following questions:

- I. Whether Ind. Code § 27-10-2-5 requires that a bond premium be refunded to a defendant, in certain situations, unless he has violated section (b) of that provision?
- II. Whether the doctrine of quantum merit [sic] should be applied under these unique facts to prevent the unjust enrichment of the bail bondsman at the expense of the defendant?
- III. Whether the trial court, in denying defendant’s motion to release bond, impermissibly considered evidence in violation of the parol evidence rule?

Second Brief at 1. Thus, Haddix asserts that Good is required by Indiana statute to return the \$50,000 bond premium. And Haddix argues that Good should return the premium on equitable grounds. Finally, Haddix contends that, on remand, the trial court abused its

discretion when it considered evidence outside the four corners of his family's contract with Good in determining that Good is not required to repay the premium.

In its Motion to Withdraw Appearance, the State asserts that the gravamen of Haddix's appeal is based on the Bond Contract between Haddix's family and Good. As the State was not a party to the Bond Contract, it continues, it has no interest in this proceeding. Haddix responds that the government is an essential party in all bond arrangements. We agree with the State.³

"A bond 'is regarded as a contract, and is to be construed, like other contracts, according to the fair import of the language used.'" Germann v. Tom's 24-Hour Towing, 776 N.E.2d 932, 934-35 (Ind. Ct. App. 2002) (quoting 4 I.L.E. Bonds § 8 (1958)). Usually, "[a] 'bond in a criminal action is in the nature of a contract between government on the one side and the defendant and his surety on the other.'" Amwest Surety Ins. Co. v. State, 750 N.E.2d 865, 868 (Ind. Ct. App. 2001). In Amwest, two criminal defendants each entered into a suretyship relationship with Amwest, a bond agency, for Amwest to post their bonds. When the defendants did not appear for their trials, Amwest filed motions seeking to be released of the bonds it had paid to the trial court's clerk. The trial court denied those motions and we affirmed.

However, unlike the defendants in Amwest, Haddix did not enter into a relationship with Good, the bond agent. Instead, Haddix's family entered into the Bond Contract. And there are no disputed funds being held by the trial court clerk here. Thus, any interest the State may have had in the criminal bond—i.e., the retention of a bond

³ In a separate order issued the date of this memorandum decision, we granted the State's Motion to Withdraw Appearance.

payment based on a failure to appear—is not at issue. Rather, the only issues raised by Haddix—namely, whether Good is required to remit the surety premium—are between Haddix’s family and Good, the parties to the Bond Contract. Haddix’s family has not sued Good for breach of contract.

“[O]ne not a party to a contract has no standing to enforce it.” Gregory & Appel Ins. Agency v. Phila. Indem. Ins. Co., 835 N.E.2d 1053, 1058 n.7 (quoting Nahmias Realty, Inc. v. Cohen, 484 N.E.2d 617, 623 (Ind. Ct. App. 1985)). As Haddix was not a party to the Bond Contract, he lacks standing to enforce the contract between his family and Good. And just as Haddix could not maintain an independent complaint on the Bond Contract, neither can he bootstrap those issues in this appeal from his criminal proceeding. Since Haddix lacks standing, it would have been appropriate for the trial court to dismiss Haddix’s claims against Good under Indiana Trial Rule 12(B)(6). See Meyers v. Meyers, 861 N.E.2d 704, 705 (Ind. 2007) (“Failure to state a claim upon which relief can be granted . . . shall include failure to name the real party in interest under [Trial] Rule 17.”); Huffman v. Ind. Office of Env’tl. Adjudication, 811 N.E.2d 806, 813 (Ind. 2004) (noting that dismissal under Trial Rule 12(B)(6) is also appropriate when a party lacks standing). Thus, without reaching the merits of Haddix’s appeal, we affirm the trial court’s order denying his request for relief.

Affirmed.

BAILEY, J., and CRONE, J., concur.